ABDUL HALIM MOHYIDDIN

v.

MALAYSIAN INSTITUTE OF ACCOUNTANTS (MIA)

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING MOTION NO: R1-25-70-1999]
7 FEBRUARY 2001

CIVIL PROCEDURE: *Appeal - Procedure - Procedure governing appeals under s. 21(2) Accountants Act 1967 - Whether O. 49 Subordinate Courts Rules 1980 applicable provision*

The appellant was found guilty of a breach of conduct and ethics by the disciplinary committee of the respondent. He appealed against this decision to the High Court by way of originating motion under O. 55 r. 13 of the Rules of the High Court 1980 ('RHC').

The respondent objected to the originating motion as a vehicle for the appeal. It submitted that the mandatory and express provision in s. 21(2) of the Accountants Act 1967 ('the Act') required the appeal procedure to be "the same as for appeals to the High Court from decisions of a subordinate court in civil matters" meaning that O. 49 of the Subordinate Court Rules 1980 ('SCR') which governed appeals from subordinate courts to the High Court be resorted to. The respondent further argued that failure to do so would mean that this appeal was not properly before the court and should be dismissed.

Held:

[1] The clear and express terms of s. 21(2) of the Act made it clear that procedure governing appeals under the Act would be identical to the procedure for appeals to the High Court from decisions of a subordinate court in civil matters. Therefore, O. 49 of the SCR was the applicable provision in regard to appeals under s. 21(2) of the Act.

[2] The words "subject to any rules of court made under the Courts of Judicature Act 1964" appearing at the commencement of s. 4 of the Subordinate Courts Rules Act 1955, did not have any effect on O. 49 of the SCR because of the clear words "unless otherwise provided by any written law" appearing at the commencement of O. 55 r. 13(2) of the RHC. Hence, the only avenue procedurally open to the appellant for the appeal was by way of O. 49 of the SCR.

[Appeal dismissed.]

Case(s) referred to:
Abaco Estate v. Selvarajah [1985] 1 CLJ 84 ***(refd)***
Syarikat Maltaco Sdn Bhd v. Eow Teh Yu & Ors [1985] 2 CLJ 120 ***(refd)***
Yong Yoke Sung & Ors v. Sungei Way Estate [1966] 1 MLJ 175 ***(refd)***

Legislation referred to:
Accountants Act 1967, ss. 3, 21(1), (2), (3)
Employment Act 1955, ss. 69, 77(2)
Rules of the High Court 1980, O. 13, O. 55 r. 13(2)
Subordinate Courts Rules Act 1955, s. 4
Subordinate Courts Rules 1980, O. 49 r. 2(3)

For the appellant - R Vinayaga Raj; M/s Skrine
For the respondent - P Anandarajah; M/s Zul Rafique & Partners

Reported by Suresh Nathan

JUDGMENT

KC Vohrah J:

The respondent is a statutory body established under s. 3 of the Accountants Act 1967 (Act 94) (the Act) having disciplinary jurisdiction over members who are registered in accordance with the Act. The appellant is registered in accordance with the Act.

The disciplinary committee of the respondent made a decision against the appellant on 27 May 1999. The decision was communicated to him on 28 May 1999. He was found guilty of a breach of By-Law 18.1 of the By-Laws (On Professional Conduct And Ethics). He was admonished and ordered to pay RM5,000 to the respondent as costs and expenses of and incidental to the inquiry.

Under s. 21(1) of the Act any member aggrieved by any decision of the disciplinary committee may, within a period of twenty days after the decision has been communicated to him, appeal to the High Court. The procedure governing such appeals is expressed thus:

> 21.1 (1) ...
>
> (2) The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court from decisions of a Subordinate Court in civil matters.

This appeal filed in the High Court is by way of originating motion under O. 55 and 13 of the Rules of the High Court 1980 (RHC). The respondent has objected to the originating motion as a vehicle for the appeal. Counsel for the respondent has submitted that the mandatory and express provision in

s. 21(2) of the Act requires the appeal procedure to be "the same as for appeals to the High Court from decisions of a Subordinate Court in civil matters" meaning that O. 49 of the Subordinate Courts Rules (SCR) which governs appeals from Subordinate Courts to the High Court must be resorted to. The further argument is that failure to do so in the light of the Supreme Court case of *Syarikat Maltaco Sdn Bhd v. Eow Teh Yu & Ors* [1985] 2 CLJ 120 which considered and approved the High Court case of *Abaco Estate v. Selvarajah* [1985] 1 CLJ 84 means that this appeal is not properly before the court and that it should be dismissed.

The appellant argues – to put it briefly – that O. 55 r. 13 RHC governs appeals from "persons or body of persons" which include a body of persons, corporate or incorporate and the respondent being a statutory body, a corporate body, falls under the class of persons specified under O. 55 r. 13 and that O. 55 r. 13 RHC prevails over O. 49 SCR and this court has jurisdiction to hear the appeal.

In the case relied upon by the respondent, *Syarikat Maltaco Sdn Bhd*, the issue was whether the appeal to the High Court from the decision of the Assistant Director of Labour should have been filed within 14 days as stated in O. 49 r. 2(3) of the SCR or within one month as stated in O. 55 r. 13 of the RHC. The appeal before the High Court was dismissed and the matter came up before the Supreme Court on appeal.

The Supreme Court interpreted s. 77(2) of the Employment Act 1955 which states that "subject to any rules made under s. 4 of the Subordinate Court Rules Act 1955, the procedure in an appeal shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require."

The Supreme Court held that the procedure of appeal against the decision of the Director-General under s. 69 of the Employment Act 1955 shall be the procedure as provided by O. 49 r. 2 of the SCR and not O. 55 r. 13 of the RHC. The Supreme Court approved the reasoning in the case of *Abaco Estate* which had held the same view and which had distinguished the judgment of Pike CJ in the case of *Yong Yoke Sung & Ors v. Sungei Way Estate* [1966] 1 MLJ 175, a Federal Court decision which had held that the appeal in such a case should have been by way of motion under O. 59 r. 13.

Hashim Yeop A Sani FCJ in *Syarikat Maltaco* at 20 remarked that Wan Hamzah FJ had crystallized his thinking in *Abaco Estate* and that in that case he had considered *Yong Yoke Sung* and in effect had ruled that the decision should be understood in the context of the time it was made. Hashim Yeop A Sani FCJ thought that this was a correct approach to and evaluation of the

decision having regard to the state of the law then. His Lordship then reproduced the relevant portion of the judgment of Wan Hamzah FJ. It is a long passage and because of the close reasoning therein the whole passage has to be reproduced:

> The decision of the Federal Court in that case was made when the Rule Committee Ordinance, 1955 in its old form was in force. At that time the Rules of Supreme Court 1957 were also in force and had not been replaced by the Rules of the High Court 1980. As pointed out by Pike CJ in that case, section 77(2) of the Employment Ordinance 1955 at that time should be read as follows:
>
> > Subject to any rules made under section 4 of the Rule Committee Ordinance 1955 the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.
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> In his judgment Pike CJ stated:
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> > Section 4 of the Rule Committee Ordinance 1948 has been repealed and replaced by section 4 of the Rule Committee Ordinance 1955. In each section there was provision for the making of rules for 'regulating and prescribing the procedure on appeals from any court or person (s) to the Court of Appeal or the High Court ...
>
> Pike CJ was referring to section 4(b) of the Rule Committee Ordinance 1955, the relevant parts of which read as follows:
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> > 4. It shall be the duty of the Rule Committee from time to time and as occasion may require to make rules for the following purposes:
> >
> > (a) ...
> >
> > (b) or regulating and prescribing the procedure in proceedings by way of appeal from any Court or persons to the Court of Appeal or the High Court, the time within which any such appeal may be brought, and ...
>
> At that time section 4 of the Rule Committee Ordinance 1955 provided for the function of one and the same Rule Committee for making rules for regulating the procedure and the practice to be followed in the High Court and in Subordinate Courts respectively. It also provided for the function of the same Rule Committee to make rules for prescribing the procedure in proceedings by way of appeal to the High Court not only from the decisions of subordinate courts but also from the decisions of persons like the decision of Penolong Pengarah Buruh in the present case. Thus the Rules of the Supreme Court 1957 were made by that Rule Committee (established under section 3) pursuant to the powers

> conferred by section 4 of the Rule Committee Ordinance 1955. Therefore the Rules of the Supreme Court 1957 were rules referred to in the opening words of section 77(2) of the Employment Ordinance, ie, the words 'Subject to any rules made under section 4 of the Rule Committee Ordinance.' I believe that if they were not so, the Federal Court would not have held that Order 59 Rule 13 of the Rules of the Supreme Court 1957 applied in that case. That this was so is shown by the fact that Pike CJ took pains to explain that the reference to section 4 of the Rule Committee Ordinance 1948 contained in the opening words of section 77(2) of the Employment Ordinance must be construed as a reference to section 4 of the Rule Committee Ordinance 1955. Pike CJ also stressed that the opening words of section 77(2) were not mere surplusage, on the ground that a perfectly sensible meaning could be given to them.

Hashim Yeop A Sani SCJ after citing at the passage concluded:

> In our opinion the words 'subject to any rules made under section 4 of the Subordinate Courts Rules Act 1955' appearing at the commencement of section 77(2) of the Employment Act are not surplusage. If it was not clear before, it is clear now that with those words the intention of the Legislature is to abide by the procedure laid down by the Subordinate Courts Rules.
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> The direction given in section 77(2) was that the procedure in an appeal to the High Court shall be the procedure in a civil appeal from the Sessions Court. Having regard to section 4(b) of the Subordinate Courts Rules Act 1955 the time within which any such appeal may be brought is clearly part of the procedure. Therefore the 'modification' referred to in section 77(2) are only modifications as to form and not as to time. We also do not think that the words 'subject to any rules of court made under the Courts of Judicature Act 1964' appearing at the commencement of section 4 of the Subordinate Courts Rules Act have any effect on Order 49 Rule 2(3) of the Subordinate Courts Rules 1980 because of the clear words 'unless otherwise provided by any written law' appearing at the commencement of Order 55 Rule 13(2) of the High Court Rules 1980.
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> We are therefore satisfied that it is clearly the intention of the Legislature that the procedure of appeal against the decision of the Director-General under section 69 of the Act shall be the procedure in a civil appeal from the Sessions Court as provided by Order 49 Rule 2 of the Subordinate Court Rules 1980 and not Order 55 Rule 13 of the High Court Rules 1980.

In our case s. 21(2) is straightforward in its language and purport. The words are: "The procedure governing such appeals to the High Court shall be the **same** as for appeals to the High Court from decision of a Subordinate Court in civil matters." (emphasis added). There are no qualifying words "with such modifications as the circumstances may require" which appeared in s. 77(2)

of the Employment Act 1955. I think the word "same" used in the provisions makes it clear beyond doubt that the procedure governing appeals under s. 21(2) shall be identical to the procedure for appeals to the High Court from decisions of a Subordinate Court in civil matters. In other words O. 49 of the SCR governing the procedure of appeals to the High Court from decisions of Subordinate Courts is the applicable provision in regard to appeals under s. 21(2) of the Act.

One other matter. The SCR were made under s. 4 of the Subordinate Courts Rules Act 1955. Bearing in mind what Hashim Yeop Sani SCJ had stated in *Syarikat Maltaco* (earlier quoted) in relation to the words "subject to any rules of court made under the Courts of Judicature Act 1964" appearing at the commencement of s. 4 of the Subordinate Courts Rules Act 1955, I hold that these words do not have any effect on O. 49 of the SCR because of the clear words "unless otherwise provided by any written law" appearing at the commencement of O. 55 r. 13(2) of the RHC which were made under the Courts of Judicature Act 1964.

My attention has been drawn to a recent High Court case U.P. No. 2-25-1999 decided on 21 September 2000 where it was held that that s. 21(2) of the Act only covers the manner of hearing of the court proceeding in an appeal against the decision of the Disciplinary Committee of the Malaysian Institute of Accountants. It was held that the words "procedure governing such appeals" in the provision "is referring to determining an appeal and not the manner in which the filing is made" and "(this) is so as there is no guideline in the provisions of the Accountants Act 1967 as to how the hearing should be conducted in this court."

I have to respectfully disagree with the decision in that case in view of the clear and express terms of s. 21(2) of the Act and the decision in *Maltaco* as I had discussed earlier.

In the circumstances the only avenue procedurally open to the appellant for the appeal is by way of O. 49 of the SCR which was not done in this case. Accordingly, and reluctantly I say this, the appeal is not properly before the court and it has to be dismissed with costs.